

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is overlaid on the graphic.

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Export-Import Bank: Environmental Review Procedures

James K. Jackson, Foreign Affairs, Defense, and Trade Division

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Export-Import Bank: Environmental Review Procedures

James K. Jackson
Specialist in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Summary

Congress requires the Export-Import Bank, and other U.S. agencies whose programs have the potential for adversely affecting the environment abroad, to develop and follow an established set of guidelines to mitigate the environmental impact of its programs. The Bank's current procedures and guidelines, as revised on April 2, 1998, were extended on June 26, 2003 and will remain in effect until March 31, 2004. These guidelines apply to all long-term transactions and project finance cases valued over \$10 million with a repayment period of more than seven years and that have potentially adverse environmental effects. Short and medium transactions under \$10 million with a repayment period of less than seven years are reviewed on a case-by-case basis. The Bank estimates that in 2002, its programs supported \$800 million in U.S. exports of environmentally beneficial U.S. goods and services. This report will be updated as warranted by events.

Background

The Export-Import Bank (Eximbank) is an independent U.S. government agency that is charged with financing and promoting exports of U.S. goods and services. To accomplish these goals, Eximbank uses its authority and resources to: assume commercial and political risks that exporters or private financial institutions are unwilling, or unable, to undertake alone; overcome maturity and other limitations in private sector export financing; assist U.S. exporters to meet foreign, officially sponsored, export credit competition; and provide guidance and advice to U.S. exporters and commercial banks and foreign borrowers. With a budget of around \$600 million, the Bank finances about 1% of U.S. exports a year. Eximbank provides guarantees and insurance to commercial banks to make trade credits available to U.S. exporters. The Bank operates under a renewable charter, the Export-Import Bank Act of 1945, as amended, and has been authorized through September 30, 2006. Congress has amended the Bank's statutes at

various times to restrict Eximbank's ability to approve transactions with firms involved in certain specified activities.¹

Eximbank has three main programs it uses to finance U.S. exports: direct loans, export credit guarantees, and export credit insurance. Eximbank's direct lending program is used primarily to aid U.S. exporters in instances where they face a foreign competitor that is receiving officially subsidized financing by a foreign government. These loans carry fixed interest rates and generally are made at terms that are the most attractive allowed under the provisions of international agreements. They are made primarily to counter attempts by foreign governments to sway purchases in favor of their exporters solely on the basis of subsidized financing, rather than on market conditions (price, quality, etc.), and to enforce internationally agreed upon terms and conditions for export financing. Guarantees and insurance are the main programs the Bank uses to assist American exporters. Both programs reduce some of the risks involved in exporting by insuring against commercial or political uncertainty.

Eximbank's Environmental Mandate

When Congress established the Bank in 1947, it directed the Bank to "aid in financing and to facilitate exports and imports and the exchange of commodities and services," and to assist small businesses. Over the years, Congress has added various requirements that restrict the Bank's actions. Congress has restricted the Bank's ability to deny applications for credit for nonfinancial or noncommercial factors, except under a number of special conditions. These conditions are determined by the President of the United States after consulting with the House Banking and Financial Services Committee (now Committee on Financial Services) and the Senate Committee on Banking, Housing, and Urban Affairs, and must be determined to be in the national interest of the United States in such areas as "international terrorism, nuclear proliferation, environmental protection and human rights (including child labor)."²

In addition, Congress has adopted various measures that require the Export-Import Bank, and other government agencies whose operations have an effect beyond U.S. borders, to consider the impact their programs may have on the environment of developing countries. For instance, the Bank is subject to Executive Order No. 12144 (44FR 1957) entitled "Environmental Effects Abroad of Major Federal Actions." This Executive Order requires federal agencies that take actions that are subject to the Order to implement procedures that are consistent with the Order. In 1979, through Executive Order No. 12166 (Oct. 19, 1979, 44 F.R. 60971) and P.L. 95-630 Congress granted the Bank the authority to deny an application for credit, where, "such action could clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights."³

¹ See CRS Report RL32007, *Export-Import Bank: Financing Requirements and Restrictions*, by James K. Jackson.

² *Ibid.*

³ 12 USC Sec 635(b)(1)(B)

In 1992, through P.L. 102-429 (12 USC Sec 635i-5) Congress required the Bank to establish procedures to, “take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee programs.”⁴ These procedures apply to any transaction considered by the Bank for a long-term support of \$10 million or more, or for which the Bank’s support is critical, and which may have “significant environmental effects upon the global commons or any country not participating in the project.”⁵ In addition, Congress directed that the Bank’s environmental standards could be used as a basis for withholding “financing from a project for environmental reasons or to approve financing after considering the potential environmental effects of a project.”⁶

Eximbank’s Environmental Procedures

In order to fulfill its Congressional mandate to establish environmental procedures, the Bank adopted a set of guidelines for evaluating the environmental impact of proposed projects and has encouraged other national export credit agencies to adopt a similar set of policies. Eximbank’s environmental procedures and guidelines were issued on February 1, 1995 following the implementation of interim procedures in October, 1993. The Bank’s procedures and guidelines were revised on April 2, 1996 and on April 2, 1998 following a review of their effectiveness in mitigating adverse environmental effects of Eximbank supported projects and their effect on the competitiveness of U.S. exporters. The procedures and guidelines, as revised on April 2, 1998, were extended on June 26, 2003 and will remain in effect until March 31, 2004.

Eximbank’s environmental procedures apply to all long-term transactions and project finance cases valued over \$10 million with a repayment period of more than seven years and that have potentially adverse environmental effects. Short and medium transactions under \$10 million with a repayment period of less than seven years are not reviewed unless the Bank’s Engineering and Environment Division believes that such a transaction has the potential for causing a “significant adverse environmental effect.” When the Bank is conducting an environmental review on long-term transactions or on project finance cases, it solicits information from other government agencies and also from non-government sources by posting the proposed transaction on the Bank’s web site.⁷ Each long-term transaction or project finance case is required to complete an “Environmental Screening Document” that is reviewed by the Bank’s Engineering and Environment Division.

After reviewing the Environmental Screening Document, the Division places each project into one of four categories, N, A, B, or C.

⁴ 12 USC Sec 635i-5(a)(1)

⁵ 12 USC Sec 635i-5(a)(1)(A)-(C)

⁶ 12 USC Sec 635i-5(a)(2)

⁷ The Bank’s web address is: <http://www.exim.gov/products/policies/noticeindex.html>

- **Category N projects** involve all transactions associated with nuclear power projects, nuclear research and related facilities and the production of nuclear fuel.⁸
- **Category A projects** are excluded from any further environmental screening because they are determined to have no significant environmental issues.
- **Category B projects** are those that are determined to be constructed in, or sufficiently near, areas that they believe will have a perceptible environmental effect.⁹
- **Category C projects** are those that are not included in any of the other three categories. Such projects are considered on a case-by-case basis.

In evaluating projects, Eximbank uses both quantitative¹⁰, or numerical, guidelines and qualitative guidelines¹¹ according to seven objectives:

- **Air quality.** Protecting air quality to a degree that safeguards both human health and the environment.
- **Water use and quality.** Protecting surface and groundwater resources from excess demand and from project related contamination.

⁸ The Bank has developed a separate set of procedures for projects that fall within this category, titled “Nuclear Procedures and Guidelines,” to “ensure that the nuclear projects Ex-Im Bank supports are environmentally responsible and that the projects include reasonable measures and provisions to address the public health and safety.” Projects are classified according to: the type of export; specifications of the recipient nuclear facility; and the function of the export in the operations of the facility. The type and scope of information the Bank requires from an applicant is related to how a project is classified. After a review by the Bank, each project is given a second classification (after receiving a “N” classification) from A to E.

⁹ Such areas include: primary forests, tropical forests, nationally designated wetlands, protected wild lands, national parks, nationally-designated refuges, coral reefs or mangrove swamps, nationally-designated seashore areas, habitat of endangered species, properties on the World Heritage List, areas reserved for ethnic minorities or indigenous peoples, or areas in which the project will require large-scale resettlement. Transactions generally included in this category are: hydroelectric projects, water resources management projects, and project finance transactions.

¹⁰ Quantitative guidelines are numerical guidelines that are used to assess air emissions, water quality, and noise impacts. These guidelines are used to identify the acceptable concentrations of pollutants in air, water, and soil, and to define noise levels.

¹¹ Qualitative guidelines are used to assess a project in three areas: 1) the management of solid, hazardous, and toxic materials and wastes; 2) the ability of a project to withstand the potential impact of natural hazards, based on elements such seismic coefficients, and other design features; and 3) the potential impact on the project’s ecological context, the socioeconomic impact, and the impact on the sociocultural environment based on informed analysis of the results of social, economic, and scientific surveys, investigations and projections.

- **Waste management.** Managing, recycling, and disposing of solid, hazardous, and toxic materials and wastes in a manner that safeguards human health and the environment.
- **Natural hazards.** Siting and design of a project to acceptable levels of natural, ecological, and economic risk.
- **Ecology.** Protecting ecological resources, encouraging conservation, and promoting practices that result in the reduction of greenhouse gases.
- **Socioeconomic and sociocultural framework.** Developing the project in order to avoid or to mitigate significant adverse impacts.
- **Noise.** Protecting sensitive receptors from unhealthy project related noise.

Eximbank excludes from consideration for export credits exports of 48 different pesticides that are banned and six pesticides that are severely restricted by the Environmental Protection Agency (EPA). In addition, Eximbank excludes from consideration 30 industrial and consumer chemicals that are banned or severely restricted by the EPA. The Bank also provides environmental guidelines for nine different categories, which include: general industrial projects; pulp and paper mills; iron and steel mills; mining and milling; oil and gas development; thermal, gas, turbine and engine power plants; forest operations; petroleum refineries and petrochemical facilities; and hydro power and water resources management. In each of the nine categories, the Bank provides specific numerical guidelines in the areas of air quality, water quality, solid and liquid non-hazardous wastes, hazardous and toxic materials and wastes, and noise.

Iron and steel mills.

Eximbank requires that projects such as iron and steel mills and mining and milling take additional environmental precautions before they are approved. The Bank requires steel mills to take extra environmental precautions because such projects entail extensive air emissions and wastewater discharge issues. Similarly, mining and milling operations face extensive environmental screening because they involve the disposal of large amounts of non-ore bearing materials and the disposal of tailings and wastewater. In such projects, the Bank requires the firms involved to provide an erosion and sediment control plan and a mine reclamation plan to return the land to conditions capable of supporting the prior land uses and to eliminate significant adverse effects on adjacent water resources.

Oil and gas development.

Exports of energy-related goods and services are a major component of the Bank's activities and accounted for over \$3.0 billion in U.S. exports in 2002, or about one-fourth of the Bank's total activities. In the area of oil and gas development, the Bank places quantitative requirements on a wide range of activities. The Bank places restrictions on air emissions and liquid emissions for both on- and offshore oil and gas development, and it requires that firms take extra precautions to reduce the risks of oil spills and to prepare contingency plans for such potential occurrences. For power plants, which have often

been an important part of the Bank's business, Eximbank encourages projects that use renewable energy as the prime electricity producer and provides financial support through its Environmental Exports Program.¹² The Bank also provides enhanced financial support for energy projects that produce electricity while emitting low levels of CO₂. This support also extends to coal-fired and oil- and gas-fired plants in order to encourage the reduction of greenhouse gases and water emissions.

Forestry operations.

Forestry operations is another area in which the Bank has developed a broad set of guidelines. These guidelines are meant to minimize the destruction of forests and other vegetative cover, soil stability siltation of waterways, pressure on human and livestock population, wildlife, bird sanctuaries, game refuges, and on regional microclimate. The Bank does not extend its programs to cover commercial logging in primary tropical forests and evaluates projects on their impact on ecologically critical boreal and temperate primary forest ecosystems. In addition, forestry operations must be able to demonstrate that the project displays a commitment to sustainable development and to the conservation of natural resources. Projects also must demonstrate that they are not harming or diminishing habitats of threatened or endangered species and that they address the interest and livelihoods of indigenous and other affected local populations. Projects are also required to develop a forest management plan, to demonstrate safeguards for water resources, and to minimize the development of new roads.

Petroleum refineries, petrochemical facilities, and power plants.

The Bank also places stringent requirements on projects that involve petroleum refineries and petrochemical facilities. Such facilities may have substantial environmental impact on air and water quality due to emissions and may also involve toxic materials. Projects are required to install monitors for gas emissions and to develop and implement contingency plans for petroleum spills. Projects must also submit to guidelines for pipelines and solid and hazardous wastes and for hazardous and toxic materials and wastes. Hydro power and water resource projects also are subject to guidelines: to ensure water quality; to preserve the ecology; to mitigate the risks from natural hazards; and to mitigate the impact on the regional socioeconomic and sociocultural environment. The Bank requires an environmental assessment for hydroelectric power projects that generate more than 10 megawatts of power and power projects that incorporate a dam of 15 meters or more in height. Projects that entail the construction of a dam also must provide a feasibility study to assess natural hazards and risks and provide assurances that design features have been incorporated into the project to mitigate these risks.

¹² The Bank's Environmental Exports Program provides enhanced levels of support for a broad range of energy-related exports in order to promote U.S. exports of renewable energy and environmentally beneficial goods and services as well as to assist U.S. exporters participating in foreign environmental projects. This program provides: short-term environmental export insurance for multi-buyer and single-buyer insurance coverage for small business environmental exporters; and medium-term export credit insurance and guarantees and loans for exports of capital goods and environmental services at the maximum allowable terms permissible under the guidelines adopted by the Organization for Economic Cooperation and Development and may also include the use of the Bank's tied aid resources to offset any offers of foreign concessionary financing for environmental projects.